# \*\*DRONES NEG – HS JUNIOR VARSITY\*\*

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### Summary

#### The Drone Surveillance Negative case attacks the problems highlighted by the Affirmative case, and the way in which the Affirmative case proposed to solve that problem.

#### In the first section, there is evidence arguing that the affirmative plan is unnecessary – for example, you may argue that requiring warrants for drone use is unnecessary because government agencies will use drones responsibly on their own, or because surveillance only impacts people who are committing crimes. You might also argue that local agencies (like the Dallas Police Department) will use drones even if the federal government chooses not to use them – or that warrants simply won’t be effective at limiting drone use because of government secrecy.

#### In the second section, there is evidence arguing that the affirmative plan is a bad idea – in this case, you can argue that drones create a perfect picture of what happens in the world, allowing us to monitor government and police action and make sure they’re on their best behavior. You can also argue that drones are important tools to prevent crime and terrorism.

#### Remember – this file gives you evidence for your speech. You shouldn’t just read every piece of evidence in this file in your debates – you should spend time in your speech comparing your evidence to the other teams and spinning a story about why the plan is a bad idea (using this evidence to back up your claims). Good luck!

### Local agencies will still use drones

#### [ ] Drones are so affordable that state and local law enforcement agencies will continue to use them even if federal agencies can’t.

Preston, reporter for Bloomberg News, 2012

[Darrell, “Drones Take to American Skies on Police, Search Missions” Bloomberg News, May 20th 2012| <http://www.bloomberg.com/news/articles/2012-05-31/drones-take-to-american-skies-on-police-search-missions>]

For about the cost of a squad car, a deputy sheriff in Mesa County, Colorado, can track criminal suspects, picture an arson scene or search for lost hikers, all with the ease of tossing a toy glider into the air. The sprawling county on the Utah line uses two remote-controlled drone aircraft, similar to those deployed against Afghanistan’s Taliban, to cover 3,300 square miles (8,600 square kilometers) of mountainous terrain. Remotely operated technology honed in the war on terror is letting Mesa County and state and local governments across the U.S. work faster and cheaper. “We save a significant amount of time,” said Ben Miller, 34, who oversees the Mesa County Sheriff’s Office’s two drones from Grand Junction. “It provides a huge resource savings.” About 20 state and local governments and 24 universities around the nation are authorized to fly remotely piloted drones, according to the Federal Aviation Administration. Those figures are expected to rise in coming years as the agency develops rules and standards to safely integrate them into airspace shared with planes, according to industry and FAA officials.

### Government agencies won’t abuse drones

#### [ ] Drones won’t be used to violate everyone’s privacy – government agencies are careful to avoid abuse.

Bloomberg News, 2013

(“FBI Uses Drones in Domestic Surveillance, Mueller Says," Bloomberg, June 19, Online: <https://www.bloomberg.com/news/articles/2013-06-19/fbi-uses-drones-in-domestic-sureillance-mueller-says>)

The Federal Aviation Administration estimates there may be about 10,000 active commercial drones in five years. Bills have been introduced in at least 18 states to limit or regulate such aircraft, according to the National Conference of State Legislatures. The FBI only uses unmanned aerial vehicles when there’s a specific operational need to conduct surveillance on stationary objects, said a U.S. law enforcement official briefed on their use. The bureau must first get FAA approval, said the official, who asked not to be identified discussing internal procedures. Drone Use The FBI used a drone at a hostage standoff in Alabama earlier this year, when Jimmy Lee Dykes, 65, took a five-year-old boy hostage and barricaded himself in an underground bunker. After almost a week, the FBI’s Hostage Rescue Team breached the bunker, killing Dykes and rescuing the child. Leahy, a Vermont Democrat, said during a March hearing on drones that he was ‘‘convinced that the domestic use of drones to conduct surveillance and collect other information will have a broad and significant impact on the everyday lives of millions of Americans going forward.” Senator Rand Paul, a Kentucky Republican, held the Senate floor for almost 13 hours in March over concerns that the U.S. could use armed drones to attack Americans on U.S. soil. Paul, who filibustered the nomination of eventual Central Intelligence Agency Director John Brennan, was told in a letter from Attorney General Eric Holder that the president didn’t have that authority. FBI Guidelines Mueller said the FBI is in “the initial stages” of formulating privacy guidelines related to its drone use. “There are a number of issues related to drones that will need to be debated in the future,” Mueller said. “It’s still in its nascent stages, this debate.” Senator Mark Udall, a Colorado Democrat who has introduced a bill in Congress designed to set regulations and privacy protections for private use of unmanned aerial systems, said he was concerned that the FBI was using drone technology before finalizing privacy guidelines. “Unmanned aerial systems have the potential to more efficiently and effectively perform law enforcement duties, but the American people expect the FBI and other government agencies to first and foremost protect their constitutional rights,” Udall said today in a statement. Border Security Homeland Security Secretary Janet Napolitano said in a June 15 Bloomberg Television interview that the operation of unmanned aircraft makes “our forces on the ground more effective” and that privacy concerns are regularly weighed and addressed by an office embedded within the department. “We are constantly making sure that we are abiding by restrictions and doing what we need to do from a border security perspective without invading American’s rights,” Napolitano said in the interview for the program, “Political Capital with Al Hunt.”

### Surveillance only impacts criminals

#### [ ] Surveillance is only bad if you’re doing something bad – it won’t hurt innocent people.

**Huffington Post, 2011**

(Google CEO On Privacy (VIDEO): 'If You Have Something You Don't Want Anyone To Know, Maybe You Shouldn't Be Doing It'; May 25; www.huffingtonpost.com/2009/12/07/google-ceo-on-privacyif\_n\_383105.html; kdf)

Yahoo, Verizon, Sprint, and others have recently come under fire for sharing customer data with the authorities, and admitting to "spying" abilities that would "shock" and "confuse" customers. A CNBC interview with Google CEO Eric Schmidt suggests the search giant Google shouldn't get off easy, and users should be wary of what Google knows about them -- and with whom they can share that information. CNBC's Mario Bartiromo asked CEO Schmidt in her December 3, 2009 interview: "People are treating Google like their most trusted friend. Should they?" Schmidt's reply hints that if there's scandalous information out there about you, it's your problem, not Google's. Schmidt tells Baritoromo: **If you have something that you don't want anyone to know, maybe you shouldn't be doing it in the first place.** He expands on his answer, adding that the **your information could be made available not only to curious searchers or prying friends, but also to the authorities, and that there's little recourse for people worried about unintentionally "oversharing" online**: But if you really need that kind of privacy, the reality is that search engines, including Google, do retain this information for some time. And [...] we're all subject, in the US, to the Patriot Act, and it is possible that that information could be made available to the authorities. Leaked documents revealing Yahoo's guide for law enforcement officials, which explains how they can obtain consumer data, highlights the type of information internet companies may have about their users -- and can share with the authorities. Silicon Alley Insider notes, For example, Yahoo's document helpfully alerts law enforcement that if they'd like to read a user's instant messanger logs, they better ask within 45 days and come bearing a 2703(d) order. That is, unless there's "imminent danger of death or serious physical injury." If that's the case, there's another letter to fax entirely See a video clip of Schmidt's below.

### Drones won’t violate privacy

#### [ ] There’s no expectation of privacy in society today and there are other threats to privacy besides drones.

Reid, Professor of Law at Lincoln Memorial University, 2014

(Melanie, “GROUNDING DRONES: BIG BROTHER'S TOOL BOX NEEDS REGULATION NOT ELIMINATION,” *Journal of Law and Technology*, 20:3, Online: <http://jolt.richmond.edu/index.php/grounding-drones-big-brothers-tool-box-needs-regulation-not-elimination/>)

The use of drones by law enforcement does not trigger Fourth Amendment protections. Drone surveillance does not constitute a trespass nor does it violate one’s reasonable expectation of privacy. As a society, we have begun to accept a diminished expectation of privacy. The real question becomes one of reasonableness and whether the use of drones is deemed a reasonable, acceptable law enforcement investigatory tool without requiring a warrant. [89] Most reasonable people, if asked, would deem it acceptable to allow the Environmental Protection Agency (EPA) to place cameras in areas where companies are known to dump toxic chemicals in order to catch the violators. Most reasonable people, if asked, would likely deem it acceptable and prudent for the EPA to place mobile cameras along sections of a polluted river to monitor for illegal dumping. Is it then logical to assume it acceptable and prudent for the EPA to utilize drones equipped with cameras to monitor the river for illegal dumping? [90] Drones equipped with a type of mobile camera are used by the Forest Service to monitor for forest fires.[256] Should drone film footage be admissible as evidence at a criminal trial if the drone captures an arsonist starting a forest fire? Ditto when a drone captures images of a suspected marijuana field? [91] Society appears to be comfortable with cameras in public areas. After the Boston Marathon bombing in April 2013, law enforcement obtained photographs from store surveillance cameras in order to identify the Boston bomber.[257] Rather than public outrage at the excessive use of surveillance cameras for law enforcement purposes, the public demanded that more be done by law enforcement. There was strong public interest in catching the bombing suspects. In cities such as Washington D.C. and New York City, cameras are everywhere.[258] Google Earth and satellite technology have become commonplace. Drones equipped with cameras are simply the latest in surveillance technology. The public is not as concerned about government surveillance in public areas as it once was.

### Drones don’t justify violence against citizens

#### [ ] Drones don’t distance law enforcement agents from the people they surveil – studies show operators actually care more about the people they watch.

Brooks, Professor at the Georgetown University Law Center, 2013

(Rosa, “Drones and Cognitive Dissonance,” Forethcoming in Drones Remote Targeting and the Promise of Law edited by Peter Bergen & Daniel Rothenberg | <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2266&context=facpub>)

Regardless, there’s little evidence that drone technologies “reduce” their operators’ awareness of human suffering. If anything, drone operators may have a far greater sense of the harm they help inflict than any sniper or bomber pilot, precisely because the technology enables such clear and longterm visual monitoring. Journalist Daniel Klaidman reports the words of one CIA drone operator, a former Air Force pilot, “I used to fly my own air missions . . . I dropped bombs, hit my target load, but had no idea who I hit.” CITE With drones, it was a different story: I can look at their faces . . . see these guys playing with their kids and wives . . . After the strike, I see the bodies being carried out of the house. I see the women weeping and in positions of mourning. That’s not PlayStation; that’s real.14 Increasingly, there is evidence that drone pilots, just like combat troops, can suffer from post-traumatic stress disorder. They watch a man play with his children and live his life, sometimes for extended periods of time. And then they drop ordinance on the man and see his mangled body. Surely this takes a psychological toll. A recent Air Force study found that 29 percent of drone pilots suffered from “burnout,” with 17 percent “clinically distressed.”15

### Warrants won’t stop government abuse of drones

#### [ ] The government can never be held accountable by something like warrants – many government agencies operate in secrecy after 9/11.

Hall and Coyne, 2013

(Abigail - Graduate Fellow in the department of economics at George Mason University and Chirstopher - Professor of Economics at George Mason University, “The Militarization of U.S. Domestic Policing, The Independent Review, 17:4, Spring, Online: https://www.independent.org/pdf/tir/tir\_17\_04\_01\_hall.pdf)

Our analysis has several implications. First, it provides evidence that undercuts the idea that the paradox of government can be permanently resolved by constitutional rules intended to check the government’s power. Government agencies’ inherent tendency is to expand beyond their designers’ initial aims and goals. Special-interest groups exacerbate this problem by seeking to expand their power and influence. The onset of crises—whether real or manufactured—begins a long, far-reaching process that erodes the already imperfect constraints on the government’s power. The question is ultimately one of speed. That is, following the onset of a major crisis, how quickly will this erosion take place? Second, the convergence of the U.S. government’s military and domestic police functions will likely continue. Higgs (1987) emphasizes that at the end of crises, government shrinks, but not back to its previous size. What happens, however, if there is a perpetual crisis with no clear enemy and no clear end? In general, the growth of government will continue. Our analysis indicates more narrowly that the militarization of domestic policing will continue into the future as the U.S. government continues its unremitting “wars” on drugs and terrorism. These crises have created a set of conditions in which the blurring of police and military activities is self-enforcing and self-extending. Third, no clear mechanism exists for reestablishing a separation of the U.S. government’s domestic police and military functions. Although political economy highlights the process through which the militarization of domestic policing emerges, it also makes clear why policies aimed at reversing this situation are unlikely to be adopted. Even if one assumes that citizens generally agree that the separation of police and military functions must be reestablished (a huge assumption in itself ), working against the present policies implies tearing apart the massive drug–terror complex, an institution that benefits from a permanent state of war domestically and internationally. This complex includes an array of government departments and agencies,¶ contractors, unions, and consultants whose very existence is predicated on the continuation of a culture of fear and crises. Resolution of the accelerating militarization is by no means simple or even clear. In order to overturn the chimera of a sustainable “protective state,” citizens must become skeptical of the possibility of establishing permanent constraints on government power. This skepticism ultimately requires recognition and appreciation of the realities of government power and a rejection of government action as a solution to the perceived crises.

### Answers to: Drone Integration Add-On – Economic decline doesn’t cause war

#### [ ] Economic decline doesn’t cause war – recent events and long term studies prove it.

Drezner, 2012

(Daniel, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>)

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. ¶ The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40¶ None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

### Answers to: Drone Integration Add-On – Economy is resilient

#### [ ] The economy is resilient – proven by the recession of 2008.

**Lamy, 2011**

(Pascal Lamy is the Director-General of the World Trade Organization. Lamy is Honorary President of Paris-based think tank Notre Europe. Lamy graduated from the prestigious Sciences Po Paris, from HEC and ÉNA, graduating second in his year of those specializing in economics. “System Upgrade” BY PASCAL LAMY | APRIL 18, 2011)

The bigger test came with the 2008-2009 Great Recession, the first truly global recession since World War II. When the international economy went into free fall, trade went right along with it. Production and supply are today thoroughly global in nature, with most manufactured products made from parts and materials imported from many other countries. These global value chains have a multiplier effect on trade statistics, which explains why, as the global economy contracted by 2 percent in 2009, trade volume shrank by more than 12 percent. This multiplier effect works the other way around as well: Growth returned to 4.6 percent and trade volume grew by a record 14.5 percent over the course of 2010. Projections for trade in 2011 are also strong, with WTO economists predicting that trade volume will rise 6.5 percent during the current year. This sharp rebound in trade has proved two essential things: Markets stayed open despite ever-stronger pressures to close them, and trade is an indispensible tool for economic recovery, particularly for developing countries, which are more dependent on trade. Shortly after the crisis broke out, we in the WTO began to closely monitor the trade policy response of our member governments. Many were fearful that pressures to impose trade restrictions would prove too powerful for governments to resist. But this is not what happened. Instead, the system of rules and disciplines, agreed to over 60 years of negotiations, held firm. In a series of reports prepared for WTO members and the G-20, we found that governments acted with great restraint. At no time did the trade-restrictive measures imposed cover more than 2 percent of world imports. Moreover, the measures used -- anti-dumping duties, safeguards, and countervailing duties to offset export or production subsidies -- were those which, in the right circumstances, are permissible under WTO rules. I am not suggesting that every safeguard measure or countervailing duty imposed during those difficult days was in compliance with WTO rules, but responses to trade pressures were generally undertaken within an internationally agreed-upon framework. Countries by and large resisted overtly noncompliant measures, such as breaking legally binding tariff ceilings or imposing import bans or quotas. As markets stayed open, trade flows began to shift, and countries that shrugged off the impact of the crisis and continued to grow -- notably China, India, and Brazil -- became ever-more attractive markets for countries that were struggling, including those in Europe and North America. Trade has been a powerful engine for growth in the developing world, a fact reflected in the far greater trade-to-GDP ratios we see there. In 2010, developing countries' share of world trade expanded to a record 45 percent, and this trend looks set to continue. Decisions made in Brasilia, Beijing, and New Delhi to open their respective economies to trade have been instrumental in enabling these countries to lift hundreds of millions of people out of poverty.

### Drones create government accountability

#### [ ] More drones mean that everyone is surveilled – that prevents racial profiling and forces law enforcement officials to be on their best behavior.

**Morrison, professor of law at Georgia State University, 2015**

(Caren Myers, DR. PANOPTICON, OR, HOW I LEARNED TO STOP WORRYING AND LOVE THE DRONE; 27 J. Civ. Rts. & Econ. Dev. 747)

The outrage against Title III did not translate into reform of many police practices that violated the privacy of the politically and economically disadvantaged. But Title III was passed before the ramifications of Terry v. Ohio, which approved stop and frisk practices, n92 were fully felt. It was before the Court decided Michigan v. Chesternut, which held that people on the street have no expectation of privacy against police inquiries, even if those inquiries include chasing someone down the street in a police cruiser, n93 and Whren v. United States, which held that if the police have probable cause for a traffic stop, that stop is lawful even if motivated by other, possibly discriminatory reasons, n94 and Illinois v. Wardlow, which held that flight from the police in a "high crime area" is enough to justify a stop, n95 and all the other cases that allowed "race-dependent decision making to become a normal part of police practice." n96 It could be that we are more aware of the differential impact of police practices today than we were in 1968. The short-lived district court case holding that New York City's stop and frisk practices violated the Fourth Amendment may reflect this. n97 "No one should live in fear of being stopped whenever he leaves his home to go about the activities of daily life," wrote Judge Scheindlin. "Those who are routinely subjected to stops are overwhelmingly people of color, and they are justifiably troubled to be singled out when many of them have done nothing to attract the unwanted attention." n98 **We obviously need a new way of policing the streets, investigating crime, and keeping the public safe**. If we turned to the universal surveillance that drones could technically provide, could the very omniscience of such a system make the entire enterprise more egalitarian? [\*764] There is something else too. **Unlike wiretapping, which focuses only on specific suspects**, drones and their capacity for universal surveillance evoke what one commentator called "the idolatrous dream of omniperception embodied in the panopticon." n99 In simpler terms, **drones contain the promise that somehow, with the right tools, we could achieve perfect knowledge. If there were a record of everything that ever happened, we could know the truth. We could know what really happened between Trayvon Martin and George Zimmerman on that night in February 2012**. n100 **We would be able to solve all the unsolved shootings and disappearances and faulty eyewitness identifications.** n101 **So much of what happens out in the world is a mystery**. People are abducted, raped, shot. Other people are accused of these misdeeds, sometimes convicted and executed for them, sometimes wrongfully. We never really know. **If there is a seductive quality to the seamless surveillance of the future, it is that we wouldn't make these mistakes again.**

### Drones create government accountability

#### [ ] Drones give citizens an important check against government corruption.

**Bernd, reporter, 2013**

(Candice, Coming Domestic Drone Wars; Sep 19; www.truth-out.org/news/item/18951-the-coming-domestic-drone-wars#)

Private Citizens and Domestic Drone Technology But in addition to major corporations, **media activists** also **are beginning to look at the possibilities of domestic drones to broadcast live streaming coverage of protests and other actions in such a way that could provide greater transparency of police activity during political clashes**, such as those that occurred in 2011 during the height of the Occupy Wall Street movement. Occupy live-streamer Tim Pool, now a producer with Vice Media, has been experimenting with a small radio-controlled quadcopter drone called the Parrot AR Drone, which can be controlled from a tablet or smartphone. Pool hopes to lower the cost of media production for the individual by using drone technology to gather audio and visual content from the air. "These things make it a lot easier for the average person to pick up the control and say, 'OK, I can do this,' whereas with something like the more expensive drones that have proprietary controllers, you have to learn how to fly those. The AR. Drone is an iPhone app. It looks like a video game," Pool told Truthout. But he admits that in moments when events are breaking it becomes harder to fly a drone. "It's difficult with all the ruckus, the police, with people running. There's no way to predict what's going to happen. It's hard to take your focus away." Pool was on the ground in Turkey during the Occupy Gezi Park demonstrations, which protested an urban development plan to replace the park with a shopping mall. During the demonstrations, Pool witnessed the police forces there shoot down a DJI Phantom drone used by an accompanying journalist, whom he said was detained by police for hours afterward. He expects the same thing could happen in the

US. **"Governments will be a bit behind in adopting drones for surveillance or quad-roters like this.** I think we'll see the private sector first. **We'll see private individuals filming major breaking news with their drones, hobbyists and eventually I know a lot of news organizations are researching drone potential.** Once that gets legal they'll start flying drones all over the place, and eventually the police will start filming with drones as well," Pool said. And he's right - scores of law enforcement agencies are experimenting with domestic drone technology already.

### Drones are key to public safety

#### [ ] Requiring warrants undermines public safety – it prevents law enforcement efforts to protect citizens from crime and terrorism.

McNeal, professor at Pepperdine, 2014   
(Gregory, “Drones and Aerial surveillance: Considerations for Legislators,” November, Online: [www.brookings.edu/research/reports2/2014/11/drones-and-aerial-surveillance](http://www.brookings.edu/research/reports2/2014/11/drones-and-aerial-surveillance))

To counter the threat of surveillance, privacy advocates have focused solely on requiring warrants before the use of drones by law enforcement. Such a mandate oftentimes will result in the grounding of drone technology in circumstances where law enforcement use of drones would be beneficial and largely non-controversial. For example, in light of the Boston Marathon bombing, police may want to fly a drone above a marathon to ensure the safety of the public. Under many bills, police would not be allowed to use a drone unless they had a warrant, premised upon probable cause to believe a crime had been or was about to be committed. This requirement exceeds current Fourth Amendment protections with regard to the reasonableness of observing activities in public places. What this means is that the police would need to put together a warrant application with sufficient facts to prove to a judge that they had probable cause. That application would need to define with particularity the place to be searched or the persons to be surveilled. All of this would be required to observe people gathered in a public place, merely because the observation was taking place from a drone, rather than from an officer on a rooftop or in a helicopter. In a circumstance like a marathon, this probable cause showing will be difficult for the police to satisfy. After all, if the police knew who in the crowd was a potential bomber, they would arrest those individuals. Rather, a marathon is the type of event where the police would want to use a drone to monitor for unknown attackers, and in the unfortunate event of an attack, use the footage to identify the perpetrators. This is precisely the type of circumstance where the use of drone could be helpful, but unfortunately it has been outlawed in many states. To make matters worse, this type of drone surveillance would pose little to no harms to privacy. A marathon is a highly public event, the event is televised, it takes place on streets where there are surveillance cameras and spectators are photographing the event. Moreover, in the states where drones have been banned (unless accompanied by a warrant), the police have not been prohibited from using any other type of surveillance equipment --- just drones. This technology centric approach has done little to protect privacy, but will certainly harm public safety, depriving law enforcement of a tool that they could use to protect people.

### Drones are key to public safety

#### [ ] Drones are key tools for law enforcement agencies to stop crime and terrorism – requiring warrants for their use risks public safety.

Reid, Professor of Law at Lincoln Memorial University, 2014

(Melanie, “GROUNDING DRONES: BIG BROTHER'S TOOL BOX NEEDS REGULATION NOT ELIMINATION,” *Journal of Law and Technology*, 20:3, Online: <http://jolt.richmond.edu/index.php/grounding-drones-big-brothers-tool-box-needs-regulation-not-elimination/>)

If state and federal legislators are successful and remain on a determined course to restrict application of drones, drone use may be severely limited, similar to what took place after the court decision on thermal imaging. After the Kyllo decision in which the Court held that thermal imaging constituted a search under the Fourth Amendment,[260] law enforcement was no longer able to use the technology to assist in building sufficient probable cause for a search warrant. Admittedly, thermal imaging allows law enforcement the ability to collect intelligence within private dwellings, i.e., locations where the owner has a reasonable expectation of privacy. Drone surveillance collects intelligence in public areas where there is no such expectation of privacy. Law enforcement needs a variety of investigatory tools that can be used without a warrant in order to gather enough facts for probable cause to justify search and arrest warrants. If government becomes significantly limited in its ability to collect information in a reasonable and impartial manner, the ability to investigate a complaint and determine if a crime has been committed will be hindered. Drone use is a reasonable, non-intrusive technique and should be one of those investigatory tools available to law enforcement agencies. Public safety requires that law enforcement have the ability to leverage every reasonable investigatory tool at its disposal to uphold the law and bring criminals to justice. Some techniques which are intrusive and infringe on privacy issues need to be closely monitored and regulated. [95] Public concern is understandable—thousands of drones from both the public and private sector will soon be accumulating a significant amount of information once FAA regulations are put in place by 2015. Drone technology is in its infancy stage. Future drones may be lighter, simpler, with longer flight times and have the ability to act/react to given situations based on software programming without human intervention. Previously, laws were passed to regulate new technology after its effects and impact on society were determined. In the case of drones, state and federal legislatures are attempting to get ahead of the curve and pass laws based on what drones can be expected to do in the future. I think we are getting ahead of ourselves. The drones of today are the same as aircraft and helicopters which are currently used to conduct aerial surveillance. There is no need to place greater restrictions on drones than regular aircraft. The unintended victims of such a law would be smaller law enforcement agencies that cannot afford their own aircraft or helicopter. Inexpensive drone technology would allow all law enforcement agencies to operate on a level playing field in the use of aerial surveillance for investigations.

### Terrorism Disadvantage 1NC (1/3)

#### UNIQUENESS: terrorist activity has increased dramatically over the past year.

Bolton, 2015 (John R, former US Rep to UN, “NSA activities key to terrorism fight,” Apr 28, Online: [www.aei.org/publication/nsa-activities-key-to-terrorism-fight/](http://www.aei.org/publication/nsa-activities-key-to-terrorism-fight/), *\*edited for ableist language*)

After six years of President Obama, however, trust in government is in short supply. It is more than a little ironic that Obama finds himself defending the NSA (albeit with obvious hesitancy and discomfort), since his approach to foreign and defense issues has consistently reflected near-total indifference, except when he has no alternative to confronting challenges to our security. Yet if harsh international realities can penetrate even Obama’s White House, that alone is evidence of the seriousness of the threats America faces. In fact, just in the year since Congress last considered the NSA programs, the global terrorist threat has dramatically increased. ISIS is carving out an entirely new state from what used to be Syria and Iraq, which no longer exist within the borders created from the former Ottoman Empire after World War I. In already-chaotic Libya, ISIS has grown rapidly, eclipsing al-Qaeda there and across the region as the largest terrorist threat. Boko Haram is expanding beyond Nigeria, declaring its own caliphate, even while pledging allegiance to ISIS. Yemen has descended into chaos, following Libya’s pattern, and Iran has expanded support for the terrorist Houthi coalition. Afghanistan is likely to fall back under Taliban control if, as Obama continually reaffirms, he withdraws all American troops before the end of 2016. This is not the time to ~~cripple~~ undermine our intelligence-gathering capabilities against the rising terrorist threat. Congress should unquestionably reauthorize the NSA programs, but only for three years. That would take us into a new presidency, hopefully one that inspires more confidence, where a calmer, more sensible debate can take place.

### **Terrorism Disadvantage 1NC (2/3)**

#### LINK: restrictions on drone use deter industry investment and law enforcement buy-in – undermining technology that is essential to nuclear counterterrorism efforts.

Bennett, writer for LA Times, 2012

(Brian, “Drones tested as tools for police and firefighters,” *LA Times*, August 5, Online: <http://articles.latimes.com/2012/aug/05/nation/la-na-drones-testing-20120805>)

On a chaparral-covered hillside 40 miles north of Los Angeles in June 2010, researchers from the Department of Homeland Security hid a device the size of a pack of cigarettes that emitted a safe pulse of low-grade radiation. It was a stand-in for a dirty bomb, or fallout from a nuclear meltdown. Nearby, a pilot toggled a joystick, and a gray drone with the wingspan of a California condor banked through the sky. As the plane's sensor sniffed for radioactive isotopes, law enforcement officers and firefighters watched a portable controller that looked like an oversized Game Boy. In minutes, a warning signal glowed on the screen. The drone had detected the radiation. "Think of Fukushima or some awful event like that," said Cmdr. Bob Osborne, who hosted the tests as part of his job finding and buying new gadgets for theLos Angeles County Sheriff's Department. "We wanted to know: Will it even be able to detect radiation? And it did." The experiment in Los Angeles County was the first in a rapidly expanding $3.2-million effort by the Department of Homeland Security to accelerate the use of drones by police and fire departments. In October, the federal department is planning to invite drone manufacturers to Ft. Sill, Okla., where their aircraft will be scored on how they perform in a series of scenarios, such as a hostage standoff, an earthquake or a hazardous material spill. A rating system will rank the capabilities of the various models. It's like a Good Housekeeping Seal of Approval for drones. But some legal experts are worried about the effect of surveillance drones in U.S. skies. "This is putting the cart before the horse where DHS and other federal agencies are looking to put money toward drone use without looking at what it means for privacy and civil liberties," said Jennifer Lynch, a lawyer with the Electronic Frontier Foundation in San Francisco. DHS has awarded hundreds of thousands of dollars in grants to at least 13 police departments to buy small surveillance drones. But safety restrictions imposed by the Federal Aviation Administration — and the fact that some models have proved difficult to use — have kept most on the ground. That could change soon. Congress this year passed a law requiring the FAA to ease restrictions on commercial drone use in U.S. airspace by 2015. Next year, the administration is expected to issue a rule allowing law enforcement and first responders to fly small unmanned aerial vehicles. The Ft. Sill center will test drones in "real-world situations where individual lives are in imminent danger," according to a recent presentation given by John Appleby, the DHS program manager for the tests, who also indicated that Homeland Security officials are drafting recommendations on how to protect people's privacy. But some in Congress are concerned. Rep.Edward J. Markey(D-Mass.), co-chairman of the Bipartisan Congressional Privacy Caucus, proposed a bill Monday that would require police to tell the FAA how they would "minimize the collection and retention of data unrelated to the investigation of a crime," among other restrictions. Republican lawmakers have introduced similar legislation. Some lawmakers have also criticized DHS, which has a fleet of 10 Predator B drones for border security, for not addressing safety and privacy concerns earlier. "DHS seems either disinterested or unprepared to step up to the plate to address the proliferation of drones, the potential threats they pose to our national security, and the concerns of our citizens of how drones flying over our cities will be used, including protecting civil liberties of individuals under the Constitution," Rep. Michael McCaul (R-Texas) complained after the department declined to send an official to an oversight hearing he had called about domestic use of drones. For the tests in Los Angeles County, Monrovia-based drone manufacturer AeroVironment was invited to fly three types of drones. The officials tested the Wasp, Raven and Puma — all between 4 and 15 pounds — for their ability to detect nuclear radiation, track a gun tossed by a fleeing suspect, find the source of a building fire and assist searchers in finding a missing person, among other challenges. The first tests were conducted over a three-day period at the Los Angeles County Fire Department's 160-acre Del Valle Regional Training Center in rural Castaic. Another round followed in May 2011 in the San Gabriel Mountains north of Pasadena at a remote police helicopter station at Barley Flats, where the Sheriff's Department sent actors out on the trails to pretend to be lost hikers. The sheriff's office had planned to test drones on a movie set in Downey designed to look like a suburban street, but the FAA wouldn't allow them to fly so close to other commercial air traffic. FAA officials also rejected a plan to fly unmanned planes over the Port of Long Beach to see if they could duck under the morning fog layer to track small boats that might smuggle drugs or attack a ship. Police and firefighters found the smaller drone, the Wasp, was simple to unpack and launch, but winds easily buffeted the aircraft, shaking the camera. The small screens used to monitor the video from all three drones made it difficult to spot hikers in the mountains. Osborne, the commander with the Sheriff's Department, was impressed with the drones, but said, "We're not going to buy anything until the technology is a little bit more mature and the flying regulations are further along."

### Terrorism Disadvantage 1NC (3/3)

#### IMPACT: a nuclear terror attack would kill billions, collapse the global economy, and escalate to global war.

Myhrvold 2014

(Nathan, founder of Intellectual Ventures and a former chief technology officer at Microsoft, Strategic Terrorism: A Call to Action; cco.dodlive.mil/files/2014/04/Strategic\_Terrorism\_corrected\_II.pdf)

Technology contains no inherent moral directive—it empowers people, whatever their intent, good or evil. This has always been true: when bronze implements supplanted those made of stone, the ancient world got scythes and awls, but also swords and battle-axes. The novelty of our present situation is that modern technology can provide small groups of people with much greater lethality than ever before. We now have to worry that private parties might gain access to weapons that are as destructive as—or possibly even more destructive than— those held by any nation-state. A handful of people, perhaps even a single individual, could have the ability to kill millions or even billions. Indeed, it is possible, from a technological standpoint, to kill every man, woman, and child on earth. The gravity of the situation is so extreme that getting the concept across without seeming silly or alarmist is challenging. Just thinking about the subject with any degree of seriousness numbs the mind. The goal of this essay is to present the case for making the needed changes before such a catastrophe occurs. The issues described here are too important to ignore. Failing nation-states—like North Korea—which possess nuclear weapons potentially pose a nuclear threat. Each new entrant to the nuclear club increases the possibility this will happen, but this problem is an old one, and one that existing diplomatic and military structures aim to manage. The newer and less understood danger arises from the increasing likelihood that stateless groups, bent on terrorism, will gain access to nuclear weapons, most likely by theft from a nation-state. Should this happen, the danger we now perceive to be coming from rogue states will pale in comparison. The ultimate response to a nuclear attack is a nuclear counterattack. Nation states have an address, and they know that we will retaliate in kind. Stateless groups are much more difficult to find which makes a nuclear counterattack virtually impossible. As a result, they can strike without fear of overwhelming retaliation, and thus they wield much more effective destructive power. Indeed, in many cases the fundamental equation of retaliation has become reversed. Terrorists often hope to provoke reprisal attacks on their own people, swaying popular opinion in their favor. The aftermath of 9/11 is a case in point. While it seems likely that Osama bin Laden and his henchmen hoped for a massive overreaction from the United States, it is unlikely his Taliban hosts anticipated the U.S. would go so far as to invade Afghanistan. Yes, al-Qaeda lost its host state and some personnel. The damage slowed the organization down but did not destroy it. Instead, the stateless al-Qaeda survived and adapted. The United States can claim some success against al-Qaeda in the years since 9/11, but it has hardly delivered a deathblow. Eventually, the world will recognize that stateless groups are more powerful than nation-states because terrorists can wield weapons and mount assaults that no nationstate would dare to attempt. So far, they have limited themselves to dramatic tactical terrorism: events such as 9/11, the butchering of Russian schoolchildren, decapitations broadcast over the internet, and bombings in major cities. Strategic objectives cannot be far behind.

### Answers to: Drones are Ineffective

#### [ ] Requiring warrants for surveillance undermines preventative drone operations which are essential for counterterrorism efforts – it waste law enforcement agencies’ time.

McNeal, professor at Pepperdine, 2014   
(Gregory, “Drones and Aerial surveillance: Considerations for Legislators,” November, Online: [www.brookings.edu/research/reports2/2014/11/drones-and-aerial-surveillance](http://www.brookings.edu/research/reports2/2014/11/drones-and-aerial-surveillance))

To counter the threat of surveillance, privacy advocates have focused solely on requiring warrants before the use of drones by law enforcement. Such a mandate oftentimes will result in the grounding of drone technology in circumstances where law enforcement use of drones would be beneficial and largely non-controversial. For example, in light of the Boston Marathon bombing, police may want to fly a drone above a marathon to ensure the safety of the public. Under many bills, police would not be allowed to use a drone unless they had a warrant, premised upon probable cause to believe a crime had been or was about to be committed. This requirement exceeds current Fourth Amendment protections with regard to the reasonableness of observing activities in public places. What this means is that the police would need to put together a warrant application with sufficient facts to prove to a judge that they had probable cause. That application would need to define with particularity the place to be searched or the persons to be surveilled. All of this would be required to observe people gathered in a public place, merely because the observation was taking place from a drone, rather than from an officer on a rooftop or in a helicopter. In a circumstance like a marathon, this probable cause showing will be difficult for the police to satisfy. After all, if the police knew who in the crowd was a potential bomber, they would arrest those individuals. Rather, a marathon is the type of event where the police would want to use a drone to monitor for unknown attackers, and in the unfortunate event of an attack, use the footage to identify the perpetrators. This is precisely the type of circumstance where the use of drone could be helpful, but unfortunately it has been outlawed in many states. To make matters worse, this type of drone surveillance would pose little to no harms to privacy. A marathon is a highly public event, the event is televised, it takes place on streets where there are surveillance cameras and spectators are photographing the event. Moreover, in the states where drones have been banned (unless accompanied by a warrant), the police have not been prohibited from using any other type of surveillance equipment --- just drones. This technology centric approach has done little to protect privacy, but will certainly harm public safety, depriving law enforcement of a tool that they could use to protect people.

### Answers to: Drones are ineffective

#### [ ] Warrant requirements will undermine effective law enforcement and counterterrorism efforts – drones are an essential part of passive surveillance strategies that maintain public safety.

Reid, Professor of Law at Lincoln Memorial University, 2014

(Melanie, “GROUNDING DRONES: BIG BROTHER'S TOOL BOX NEEDS REGULATION NOT ELIMINATION,” *Journal of Law and Technology*, 20:3, Online: <http://jolt.richmond.edu/index.php/grounding-drones-big-brothers-tool-box-needs-regulation-not-elimination/>, *\*this evidence has been modified for ableist language*)

This proactive stance by state and federal legislatures and their aversion to drone use is a bit troubling, and appears to be a knee-jerk reaction to the idea of a “drone surveillance state.” Legislators have not fully explored which law enforcement investigatory tools trigger Fourth Amendment protections and which ones do not, and have not considered the ramifications of their hastily drafted laws. [50] Law enforcement has a select group of investigatory tools it can use without triggering Fourth Amendment protections. Surveillance of suspects is one of the oldest tools that law enforcement has used to collect information and determine whether criminal activity is occurring. [160] It is one of the first steps of any criminal investigation. The idea that a warrant would be needed to surveil a suspect would effectively ~~cripple~~ [undermine] any investigation before it even got off the ground. [51] Only a certain number of investigatory tools are given Fourth Amendment protection. If all investigatory tools were outside the Fourth Amendment, then it would be virtually impossible for law enforcement to ever gain probable cause to seek a warrant. Therefore, law enforcement requires methods and tools that are permissible under Fourth Amendment protections in order to allow for the collection of sufficient information to use as probable cause for an arrest, search, or warrant for other, more intrusive investigatory tools.

### Answers to: Mass surveillance hurts counter-terrorism efforts

#### [ ] Surveillance is essential to stop terrorism – each program plays an important role, it’s seen in the small number of terrorist attacks over the past decade.

Zenko, 2015

(Micah; CIA Director: We’re Winning the War on Terror, But It Will Never End; Apr 8; blogs.cfr.org/zenko/2015/04/08/cia-director-were-winning-the-war-on-terror-but-it-will-never-end/)

If we were not as engaged against the terrorists, I think we would be facing a horrendous, horrendous environment. Because they would have taken full advantage of the opportunities that they have had across the region… We have worked collectively as a government but also with our international partners very hard to try and root many of them out. Might some of these actions be stimulants to others joining their ranks? Sure, that’s a possibility. I think, though it has taken off of the battlefield a lot more terrorists, than it has put on. This statement is impossible to evaluate or measure because the U.S. government has consistently refused to state publicly which terrorist organizations are deemed combatants, and can therefore be “taken out on the battlefield.” However, relying upon the State Department’s annual Country Reports on Terrorism,the estimated strength of all al-Qaeda-affiliated groups has grown or stayed the same since President Obama came into office. Of course, non-al-Qaeda-affiliated groups have arisen since 9/11, including the self-proclaimed Islamic State, which the Central Intelligence Agency estimated last September to contain up to 31,500 fighters, and Boko Haram, which has perhaps 10,000 committed members. However, the most interesting question posed to Brennan came at the very end from a Harvard freshman who identified himself as Julian: “We’ve been fighting the war on terror since 2001. Is there an end in sight, or should we get used to this new state of existence? Brennan replied: It’s a long war, unfortunately. But it’s been a war that has been in existence for millennia, at the same time—the use of violence for political purposes against noncombatants by either a state actor or a subnational group. Terrorism has taken many forms over the years. What is more challenging now is, again, the technology that is available to terrorists, the great devastation that can be created by even a handful of folks, and also mass communication that just proliferates all of this activity and incitement and encouragement. So you have an environment now that’s very conducive to that type of propaganda and recruitment efforts, as well as the ability to get materials that are going to kill people. And so this is going to be something, I think, that we’re always going to have to be vigilant about. There is evil in the world and some people just want to kill for the sake of killing…This is something that, whether it’s from this group right now or another group, I think the ability to cause damage and violence and kill will be with us for many years to come. We just have to not kill our way out of this because that’s not going to address it. We need to stop those attacks that are in train but we also have to address some of those underlying factors and conditions. I’m not saying that poverty causes somebody to become a terrorist, or a lack of governance, but they certainly do allow these terrorist organizations to grow and they take full advantage of those opportunities. To summarize, the war on terrorism is working, compared to inaction or other policies. But, the American people should expect it to continue for millennia, or as long as lethal technologies and mass communication remain available to evil people.

### Answers to: Mass surveillance hurts counter-terrorism efforts

#### [ ] Surveillance works – it’s stopped over 50 attacks on the United States.

Boot, senior fellow at the Council on Foreign Relations, 2013

(Max “Stay calm and let the NSA carry on” - LA Times – June 9th - http://articles.latimes.com/2013/jun/09/opinion/la-oe-boot-nsa-surveillance-20130609)

After 9/11, there was a widespread expectation of many more terrorist attacks on the United States. So far that hasn't happened. We haven't escaped entirely unscathed (see Boston Marathon, bombing of), but on the whole we have been a lot safer than most security experts, including me, expected. In light of the current controversy over the National Security Agency's monitoring of telephone calls and emails, it is worthwhile to ask: Why is that? It is certainly not due to any change of heart among our enemies. Radical Islamists still want to kill American infidels. But the vast majority of the time, they fail. The Heritage Foundation estimated last year that 50 terrorist attacks on the American homeland had been foiled since 2001. Some, admittedly, failed through sheer incompetence on the part of the would-be terrorists. For instance, Faisal Shahzad, a Pakistani American jihadist, planted a car bomb in Times Square in 2010 that started smoking before exploding, thereby alerting two New Yorkers who in turn called police, who were able to defuse it. But it would be naive to adduce all of our security success to pure serendipity. Surely more attacks would have succeeded absent the ramped-up counter-terrorism efforts undertaken by the U.S. intelligence community, the military and law enforcement. And a large element of the intelligence community's success lies in its use of special intelligence — that is, communications intercepts. The CIA is notoriously deficient in human intelligence — infiltrating spies into terrorist organizations is hard to do, especially when we have so few spooks who speak Urdu, Arabic, Persian and other relevant languages. But the NSA is the best in the world at intercepting communications. That is the most important technical advantage we have in the battle against fanatical foes who will not hesitate to sacrifice their lives to take ours. Which brings us to the current kerfuffle over two NSA monitoring programs that have been exposed by the Guardian and the Washington Post. One program apparently collects metadata on all telephone calls made in the United States. Another program provides access to all the emails, videos and other data found on the servers of major Internet firms such as Google, Apple and Microsoft. At first blush these intelligence-gathering activities raise the specter of Big Brother snooping on ordinary American citizens who might be cheating on their spouses or bad-mouthing the president. In fact, there are considerable safeguards built into both programs to ensure that doesn't happen. The phone-monitoring program does not allow the NSA to listen in on conversations without a court order. All that it can do is to collect information on the time, date and destination of phone calls. It should go without saying that it would be pretty useful to know if someone in the U.S. is calling a number in Pakistan or Yemen that is used by a terrorist organizer. As for the Internet-monitoring program, reportedly known as PRISM, it is apparently limited to "non-U.S. persons" who are abroad and thereby enjoy no constitutional protections. These are hardly rogue operations. Both programs were initiated by President George W. Bush and continued by President Obama with the full knowledge and support of Congress and continuing oversight from the federal judiciary. That's why the leaders of both the House and Senate intelligence committees, Republicans and Democrats alike, have come to the defense of these activities. It's possible that, like all government programs, these could be abused — see, for example, the IRS making life tough on tea partiers. But there is no evidence of abuse so far and plenty of evidence — in the lack of successful terrorist attacks — that these programs have been effective in disrupting terrorist plots. Granted there is something inherently creepy about Uncle Sam scooping up so much information about us. But Google, Facebook, Amazon, Twitter, Citibank and other companies know at least as much about us, because they use very similar data-mining programs to track our online movements. They gather that information in order to sell us products, and no one seems to be overly alarmed. The NSA is gathering that information to keep us safe from terrorist attackers. Yet somehow its actions have become a "scandal," to use a term now loosely being tossed around. The real scandal here is that the Guardian and Washington Post are compromising our national security by telling our enemies about our intelligence-gathering capabilities. Their news stories reveal, for example, that only nine Internet companies share information with the NSA. This is a virtual invitation to terrorists to use other Internet outlets for searches, email, apps and all the rest. No intelligence effort can ever keep us 100% safe, but to stop or scale back the NSA's special intelligence efforts would amount to unilateral disarmament in a war against terrorism that is far from over.

### Terrorist attacks will hurt privacy rights

#### [ ] If we fail to prevent a terrorist attack, governments will enact even more totalitarian policies.

Tuccille, 2015

(J.D., editor of Reason.com, “What's a terrorist attack if not an excuse for domestic spying?,” Jan 14, Online: reason.com/blog/2015/01/14/whats-a-terrorist-attack-if-not-an-excus)

Following on last week's terrorist attacks in France, the British government has dusted off a long-sought "snooper's charter"—better known as the Data Communications Bill—to ease the power of officials to track people's private communications. "It is too soon to say for certain, but it is highly probable that communications data was used in the Paris attacks to locate the suspects and establish the links between the two attacks," Home Secretary Theresa May told Parliament. "Quite simply, if we want the police and the security services to protect the public and save lives, they need this capability. You get that? There's no evidence that the bill would have prevented the Charlie Hebdo attack, but that incident is why you should pass the bill. Prime Minister David Cameron even says that messaging services that can't be intercepted should be banned. Using the latest outrage to inject new life into old security-state legislation isn't a British specialty. When the Patriot Act was introduced in 2001, then-Senator Joseph Biden boasted, "I drafted a terrorism bill after the Oklahoma City bombing. And the bill John Ashcroft sent up was my bill." This is a game in which politicians everywhere can participate. Never mind that, as Reason's Ron Bailey pointed out in November, "there is very little evidence that the Internet is making terrorism easier to do." But pretending otherwise, and passing legislation that empowers security services, lets government officials accumulate power and give the appearance of doing something when the public is frightened. Added Bailey: As [David Benson, a political scientist at the University of Chicago] argues, exaggerating the Internet's usefulness to terrorism has "egregious costs." Some officials, for example, have been calling for a "kill switch" that would allow the government to shut down the Internet in an emergency. Noting how much Americans depend upon the Net for commerce, communication, medical care, and so forth, Benson points out that "It is difficult to imagine a terrorist attack being as costly as turning off the Internet would be." Terrorism also gives officials an excuse to tighten censorship—especially in jurisdictions, including many democratic countries in Europe, where the whole free speech thing has relatively shallow roots. So get ready for the ride. Driven by a need to appear proactive, and a preexisting taste for accumulating power, government officials once again exploit a murderous incident to increase their authority over us. Which escalates the ongoing cold war between people who want to be left alone, and the governments that seek to control them.

### Answers to: Nuclear terrorism won’t happen

#### [ ] There have been dozens of sales and transfers of nuclear materials in the past decades – it’s very likely that terrorists have nuclear weapons.

Schwartz, analyst at the Dept. of Defense, 2015   
(Benjamin, Right of Boom: The Aftermath of Nuclear Terrorism, p. 15)

With respect to "loose nukes," the threat faced today is unprecedented. The good news is that the danger that Allison focused on-fissile material leaking out of the former Soviet republics-has been substantially curtailed, though not eliminated. When Allison served in government he was confronted by a slew of nuclear smuggling cases. Between 1992 and 2002, eleven cases of attempted sales of highly enriched uranium and two cases of attempted plutonium sales occurred. In contrast, between 2002 and 2012 there have been only four cases-all but one of which was linked to a single country, Georgia. This is a good news story, which is probably due in no small measure to the efforts of the United States to provide rapid security upgrades as part of the Nunn-Lugar Cooperative Threat Reduction program.6 Unfortunately, this good news has been accompanied by extremely dangerous developments in Pakistan. The country is in the midst of a massive expansion of its nuclear weapons complex at a time when radicalization is on the rise and its military is under frequent attack from insurgents. Moreover, the size of the nuclear complex is not only expanding but, according to Feroz Khan, a thirty-year veteran of the Pakistani program, the military is also planning to produce miniaturized tactical nuclear weapons, deploy them in a ready-to-launch state, and mate them with new delivery vehicles. From a proliferation perspective this is a frightening prospect, particularly considering that Pakistan has an unparalleled history of proliferation. This is all occurring in a country that hosted Osama bin Laden and the senior leadership of al-Qaeda for over a decade and where the military intelligence service continues to court, coopt, and coordinate with a wide array of terrorists groups.7

### Answers to: Nuclear terrorism won’t happen

#### [ ] Nuclear terrorism is likely – even a small risk is bad enough to justify violations of privacy.

Schwartz, analyst at the Dept. of Defense, 2015  
(Benjamin, Right of Boom: The Aftermath of Nuclear Terrorism, p. 23-25)

Is the scenario above simply the product of an overactive imagination and a penchant for alarmism? This is a reasonable question to ask. And it is worth answering before embarking on an exploration of potential responses to nuclear terrorism. Those who assert that there is a genuine threat of nuclear terrorism should acknowledge at the outset that there are legitimate reasons for skepticism. In fact, those who have paid closest attention to the issue over the years may be most conditioned to be incredulous. They have heard public officials repeatedly issue dire warnings of impending terrorist attacks, watched and seen that no attack materializes, and then have been presented with little or no evidence to support the initial alert. It is also perfectly understandable that reasonable people question the competence and/or trustworthiness of US national security officials, particularly those responsible for nuclear issues. This is especially so in light of the second American-led invasion of Iraq-a war justified to the public largely on the basis of nonexistent nuclear weapons. Moreover, warnings of impending doom didn't originate with then vice president Dick Cheney. "I think we have to live with the expectation," remarked a Los Alamos atomic engineer in 1973, "that once every four or five years a nuclear explosion will take place and kill a lot of people." This statement is cited in John McPhee's The Curve of Binding Energy, which detailed concerns about the proliferation of nuclear weapons to nonstate actors over forty years ago.3 In the context of this history, accusations of Chicken Little-like behavior aren't flippant reactions. While exaggeration may mislead the credulous and offend the perceptive, neither the absence of a precedent for nuclear terrorism nor the intelligence failure regarding Saddam Hussein's WMD program change the growing threat. Many of these conditions aren't new; they have existed since the dawn of the nuclear age, and the world has been very fortunate that the danger has been effectively managed for so long. Other conditions are truly unprecedented. The world crossed from Graham Allison's "Three No's" into three Yeses with a whimper rather than a bang, but we have nevertheless entered an environment of extraordinary risk. Allison's contention that "[t]he detonation of a terrorist nuclear device in an American city is inevitable if the U.S. continues on its present course" is certainly debatable.4 Yet an objective assessment of the current nuclear security situation and its future trajectory leads to an unavoidable conclusion: We are more vulnerable to nuclear terrorism than at any time since the dawn of the nuclear age.

### Answers to: Terrorism threats are inflated

#### [ ] Bias is universal - their experts inflate the risks of government surveillance too.

Bolton, former US Representative to the United Nations, 2015

(John R, “NSA activities key to terrorism fight,” Apr 28, Online: [www.aei.org/publication/nsa-activities-key-to-terrorism-fight/](http://www.aei.org/publication/nsa-activities-key-to-terrorism-fight/))

Congress is poised to decide whether to re-authorize programs run by the National Security Agency that assess patterns of domestic and international telephone calls and emails to uncover linkages with known terrorists. These NSA activities, initiated after al-Qaeda’s deadly 9/11 attacks, have played a vital role in protecting America and our citizens around the world from the still-metastasizing terrorist threat. The NSA programs do not involve listening to or reading conversations, but rather seek to detect communications networks. If patterns are found, and more detailed investigation seems warranted, then NSA or other federal authorities, consistent with the Fourth Amendment’s prohibition against unreasonable searches and seizures, must obtain judicial approval for  more specific investigations. Indeed, even the collection of the so-called metadata is surrounded by procedural protections to prevent spying on U.S. citizens. Nonetheless, critics from the right and left have attacked the NSA for infringing on the legitimate expectations of privacy Americans enjoy under our Constitution. Unfortunately, many of these critics have absolutely no idea what they are talking about; they are engaging in classic McCarthyite tactics, hoping to score political points with a public justifiably worried about the abuses of power characteristic of the Obama administration. Other critics, following Vietnam-era antipathies to America’s intelligence community, have never reconciled themselves to the need for robust clandestine capabilities. Still others yearn for simpler times, embodying Secretary of State Henry Stimson’s famous comment that “gentlemen don’t read each others’ mail.” The ill-informed nature of the debate has facilitated scare-mongering, with one wild accusation about NSA’s activities after another being launched before the mundane reality catches up. And there is an important asymmetry at work here as well. The critics can say whatever their imaginations conjure up, but NSA and its defenders are significantly limited in how they can respond. By definition, the programs’ success rests on the secrecy fundamental to all intelligence activities. Frequently, therefore, explaining what is not happening could well reveal information about NSA’s methods and capabilities that terrorists and others, in turn, could use to stymie future detection efforts.

### Security is more important than privacy

#### [ ] The threat of terrorism is growing - now is the worst time to cancel effective surveillance programs.

Zuckerman, Policy Analyst at the Heritage Foundation, 2013

(Jessica, “60 Terrorist Plots Since 9/11: Continued Lessons in Domestic Counterterrorism,” *Heritage Foundation*, July, Online: <http://www.heritage.org/research/reports/2013/07/60-terrorist-plots-since-911-continued-lessons-in-domestic-counterterrorism>)

In a political environment of sequestration on the one hand and privacy concerns on the other, there are those on both sides of the aisle who argue that counterterrorism spending should be cut and U.S. intelligence agencies reigned in. As the above list indicates however, the long war on terrorism is far from over. Most disturbingly, an increasing number of Islamist-inspired terrorist attacks are originating within America’s borders. The rise of homegrown extremism is the next front in the fight against terrorism and should be taken seriously by the Administration. While there has not been another successful attack on the homeland on the scale of 9/11, the bombings in Boston reminded the country that the threat of terrorism is real and that continued vigilance is critical to keeping America safe. Congress and the Administration must continue to upgrade and improve the counterterrorism capabilities of law enforcement and intelligence agencies as well exercise proper oversight of these capabilities. The American people are resilient, but the lesson of Boston is that the government can and should do more to prevent future terror attacks.

### Presidential Powers Disadvantage 1NC (1/3)

#### UNIQUENESS: President Obama has sweeping executive power now

**Pildes, professor of constitutional law at New York University School of Law, 2012**

(Richard, April 2012, “Law and the President,” 125 Harv. L. Rev. 1381, Lexis)

The general outlines of this history are familiar. But in a bracing new book, The Executive Unbound, Professors Eric Posner and Adrian Vermeule want to take this story to a different quantum level. Posner and Vermeule insist not just that presidential powers have expanded dramatically in recent decades but that these powers are not effectively constrained by law. The stark reality of presidential power, as they put it, is that "law does little to constrain the modern executive" (p. 15). This is true, they assert, not just in exceptional circumstances, such as times of crisis or emergency, but in general in the modern state. This unconstrained power allegedly exists not just with respect to limited substantive arenas, such as foreign affairs or military matters, but across the board, with respect to domestic matters as well. 18 Thus, while some have long argued that inter arma enim silent leges (in times of war, the laws are silent), 19 Posner and Vermeule argue that the laws [\*1386] are always silent, in effect, when it comes to presidential power. Finally, they contend that this proposition is not just true with respect to some sources of potential legal constraint, such as the Constitution; it is central to their argument that statutes that purport to regulate presidential conduct are also largely ineffective. As they say, "the basic aspiration of liberal legalism to constrain the executive through statutory law has largely failed" (p. 112). Thus, when Congress does impose legislative constraints, Posner and Vermeule assert, the laws are typically vague, leaving ample room for executive discretion. Statutes "have a Potemkin quality: they stand about in the landscape, providing an impressive facade of legal constraint on the executive, but actually blocking very little action that presidents care about" (p. 88). Those legal constraints that do exist, whether constitutional or statutory, are not aggressively enforced by courts - first, because American courts stay out of many controversies concerning presidential power, and second, because when courts do play a role, they defer substantially to executive action and interpretation (pp. 52-58). Indeed, presidents can act directly in the face of even clear law and can force other institutions, such as Congress and the courts, to try to stop them. Much of the time, these other institutions will be unable or unwilling to do so. The Executive Unbound thus invites a general inquiry into the relationship between law and presidential power, rather than the more traditional, narrowly focused debates about presidential power during "emergencies," or presidential control over military and foreign affairs. 20 As a more general matter, Posner and Vermeule insist we should abandon as naive, self-deluded, and anachronistic the image and rhetoric of a President bound by law - an image they call that of "liberal legalism" or the "Madisonian framework" (p. 15). The imperial presidency, they suggest, is simply a fact: we need to become mature enough to accept it. And we should be clear about what the imperial presidency entails: presidential action that law does not meaningfully constrain. Posner and Vermeule, however, urge us not to be anxious or worried about this state of affairs. We should not obsessively fear that we live, effectively, in a constitutional dictatorship. The alternative to a legally constrained President is not a President unconstrained altogether. [\*1387] Instead, Posner and Vermeule suggest that a variety of other constraints on presidential action have emerged as effective substitutes for the legal constraints that were originally envisioned in the Madisonian constitutional design or that "liberal legalist" proponents wish for today. Generally put, Posner and Vermeule call these alternative constraints "politics and public opinion" (p. 15), which are said to work effectively to cabin executive power to an appropriate extent.

### Presidential Powers Disadvantage 1NC (2/3)

#### LINK: Congressional limits on surveillance spill over to justify broader congressional encroachment on national security issues

**Donohue,** Associate Prof of Law at Georgetown Law, 2011

(Laura, Fall, “SYMPOSIUM: MOVING TARGETS: ISSUES AT THE INTERSECTION OF NATIONAL SECURITY & AMERICAN CRIMINAL LAW: ARTICLE: THE LIMITS OF NATIONAL SECURITY,” 48 Am. Crim. L. Rev. 1573, Lexis)

From the inside, such blatant opportunism may appear harmless. In light of limited bandwidth, the way to get attention is to make an issue appear larger than perhaps it really is. But the effects of these provisions are not harmless. They carry significant structural implications. As a constitutional matter, the shift to the national security discourse diminishes the role that Congress performs through its oversight function. The number of committees responsible for "national security" has rapidly proliferated to include [\*1754] nearly every Senate and House committee. 1292 This means that no single committee has a complete picture of national security. Nor is any single committee held responsible, to the electorate, for such oversight. Overlapping responsibilities allow legislators to take credit for keeping the country safe, and apportion blame for any failures. For those committees given authority to oversee discreet executive actions, strong political pressures demand that the legislators not hamstring the executive branch on issues of security. 1293 Even where the executive acts outside the law, congressional oversight is limited. The National Security Agency's illegal wiretapping serves as a clear example. Despite the Bush Administration's disregard for legislative restrictions on the wiretapping of U.S. citizens, 1294 Congress retroactively legalized the Administration's actions on grounds that it involved sensitive issues. 1295 \*\*\*FOOTNOTE BEGINS\*\*\* See Charlie Savage & James Risen, Federal Judge Finds N.S.A. Wiretaps Were Illegal, N.Y. TIMES (Mar. 31, 2010), http://www.nytimes.com/2010/04/01/us/01nsa.html ("The 2005 disclosure of the existence of [Bush's authorization of illegal wiretapping] set off a national debate over the limits of executive power and the balance between national security and civil liberties. The arguments continued over the next three years, as Congress sought to forge a new legal framework for domestic surveillance . . . . Congress overhauled the Foreign Intelligence Surveillance Act to bring federal statutes into closer alignment with what the Bush administration had been secretly doing. The legislation essentially legalized certain aspects of the program."). \*\*\*FOOTNOTE ENDS\*\*\* National security, for that matter, entails a significant amount of secrecy, such that Congress may not even be aware of what is happening. When Congress is aware of executive actions, legislators may be prevented from bringing certain information to light via classification, which is itself an executive decision. Congress's ability to act with regard to authorization, at the outset, is similarly narrow. The burden rests on those opposing national security measures to demonstrate that failing to enact such measures will not undermine the country's safety-a nearly impossible burden of proof. For those measures with a significant impact on civil rights, there may be an effort to include a sunset provision, essentially providing an expiration date. But temporary powers rarely turn out to be so limited; instead, they become a baseline on which further authorities are [\*1755] built.

### Presidential Powers Disadvantage 1NC (3/3)

#### IMPACT: Congressional war authority is ineffective – executive war powers key to combating a litany of transnational threats – combating terror, rogue states, and nuclear proliferation all require a flexible executive.

Yoo, professor at UC Berkeley school of law, 2007

(John, Assistant Attorney General in the Office of Legal Counsel of the U.S. Department of Justice. 4/18, “Exercising Wartime Powers,” <http://hir.harvard.edu/archives/1369>)

Proponents of congressional war power often argue that the executive branch is unduly prone to war. In this view, if the president and Congress have to agree on warmaking, It is also not clear that the absence of congressional approval has led the nation into wars it should not have waged. The experience of the Cold War, which provides the best examples of military hostilities conducted without congressional support, does not clearly come down on the side of a link between institutional deliberation and better conflict selection. Wars were fought throughout the world by the two superpowers and their proxies, such as in Korea, Vietnam, and Afghanistan, during this period. Yet the only war arguably authorized by Congress--and this point is debatable--was the Vietnam War. Aside from bitter controversy over Vietnam, there appeared to be significant bipartisan consensus on the overall strategy of containment, as well as the overarching goal of defeating the Soviet Union. The United States did not win the four-decade Cold War by declarations of war; rather, it prevailed through the steady presidential application of the strategy of containment, supported by congressional funding of the necessary military forces. On the other hand, congressional action has led to undesirable outcomes. Congress led the United States into two "bad" wars, the 1798 quasi-war with France and the War of 1812. Excessive congressional control can also prevent the United States from entering into conflicts that are in the national interest. Most would agree now that congressional isolationism before World War II harmed US interests and that the United States and the world would have been far better off if President Franklin Roosevelt could have brought the United States into the conflict much earlier. Congressional participation does not automatically or even consistently produce desirable results in war decision making. Critics of presidential war powers exaggerate the benefits of declarations or authorizations of war. What also often goes unexamined are the potential costs of congressional participation: delay, inflexibility, and lack of secrecy. In the post-Cold War era, the United States is confronting the growth in proliferation of WMDs, the emergence of rogue nations, and the rise of international terrorism. Each of these threats may require pre-emptive action best undertaken by the President and approved by Congress only afterward. Take the threat posed by the Al Qaeda terrorist organization. Terrorist attacks are more difficult to detect and prevent than conventional ones. Terrorists blend into civilian populations and use the channels of open societies to transport personnel, material, and money. Although terrorists generally have no territory or regular armed forces from which to detect signs of an impending attack, WMDs allow them to inflict devastation that once could have been achievable only by a nation-state. To defend itself from this threat, the United States may have to use force earlier and more often than when nation-states generated the primary threats to US national security. The executive branch needs the flexibility to act quickly, possibly in situations wherein congressional consent cannot be obtained in time to act on the intelligence. By acting earlier, the executive branch might also be able to engage in a more limited, more precisely targeted, use of force. Similarly, the least dangerous way to prevent rogue nations from acquiring WMDs may depend on secret intelligence gathering and covert action rather than open military intervention. Delay for a congressional debate could render useless any time-critical intelligence or windows of opportunity. The Constitution creates a presidency that is uniquely structured to act forcefully and independently to repel serious threats to the nation. Instead of specifying a legalistic process to begin war, the Framers wisely created a fluid political process in which legislators would use their appropriations power to control war. As the United States confronts terrorism, rogue nations, and WMD proliferation, we should look skeptically at claims that radical changes in the way we make war would solve our problems, even those stemming from poor judgment, unforeseen circumstances, and bad luck.

### **Answers to: Restrictions on presidential powers are inevitable**

#### [ ] Congress currently has no ability to on the president’s inherent powers over domestic surveillance – the plan reverses that trend.

**Gormley, 2006**

(Ken, Associate Prof. of Constitutional Law at Duquesne University School of Law, 2/28/6, “U.S. SENATOR ARLEN SPECTER (R-PA) HOLDS A HEARING ON THE NSA'S SURVEILLANCE AUTHORITY,” Political Transcript Wire, Lexis)

GORMLEY: I think the confrontation is between the president's powers under the executive power clause and commander in chief clause and the Fourth Amendment. I don't think Congress can narrow the Fourth Amendment. I don't think Congress can take away the president's independent powers. I think that the Fourth Amendment does allow at least some domestic surveillance when you're talking about people the president believes are foreign terrorists. I don't doubt that will mean some injustice or some innocent people will be listened to. But the president makes all sorts of decisions in terms of targeting decisions that kill innocent people around the world, because that's the nature of war. It's unfortunate, but I don't think FISA can really play in this game when you're talking about major constitutional powers.

### Answers to: Balance of powers better than presidential power

#### [ ] Congressional oversight has zero chance of working – and substantially undermines executive secrecy – decimating war powers.

**Posner and Vermeule, 2010**

(Eric, professor of law at the University of Chicago AND Adrian, professor of law at Harvard, The Executive Unbound, p. 25-29)

Many institutional factors hamper effective legislative monitoring of executive discretion for legal compliance. Consider the following problems. Information Asymmetries Monitoring the executive requires expertise in the area being monitored. In many cases, Congress lacks the information necessary to monitor discretionary policy choices by the executive. Although the committee system has the effect, among others, of generating legislative information and expertise,18 and although Congress has a large internal staff, there are domains in which no amount of legislative expertise suffices for effective oversight. Prime among these are areas of foreign policy and national security. Here the relative lack of legislative expertise is only part of the problem; what makes it worse is that the legislature lacks the raw information that experts need to make assessments. The problem would disappear if legislators could cheaply acquire information from the president, but they cannot. One obstacle is a suite of legal doctrines protecting executive secrecy and creating deliberative privileges— doctrines that may or may not be justified from some higher-order systemic point of view as means for producing optimal deliberation within the executive branch. Although such privileges are waivable, the executive often fears to set a bad institutional precedent. Another obstacle is the standard executive claim that Congress leaks like a sieve, so that sharing secret information with legislators will result in public disclosure. The problem becomes most acute when, as in the recent controversy over surveillance by the National Security Agency, the executive claims that the very scope or rationale of a program cannot be discussed with Congress, because to do so would violate the very secrecy that makes the program possible and beneficial. In any particular case the claim might be right or wrong; legislators have no real way to judge, and they know that the claim might be made either by a wellmotivated executive or by an ill-motivated executive, albeit for very different reasons. Collective Action Problems Part of what drives executive reluctance to share information is that, even on select intelligence committees, some legislator or staffer is bound to leak and it will be difficult to pinpoint the source. Aware of the relative safety that the numbers give them, legislative leakers are all the more bold. This is an example of a larger problem, arising from the fact that there are many more legislators than top-level executive officials. Compared to the executive branch, Congress finds it more costly to coordinate and to undertake collective action (such as the detection and punishment of leakers). To be sure, the executive too is a “they,” not an “it.” Much of what presidents do is arbitrate internal conflicts among executive departments and try to aggregate competing views into coherent policy over time. As a strictly comparative matter, however, the contrast is striking: the executive can act with much greater unity, force, and dispatch than can Congress, which is chronically hampered by the need for debate and consensus among large numbers. This comparative advantage is a principal reason why Congress enacts broad delegating statutes in the first place, especially in domains touching on foreign policy and national security. In these domains, and elsewhere, the very conditions that make delegation attractive also hamper congressional monitoring of executive discretion under the delegation. There may or may not be offsetting advantages to Congress’s large numbers. Perhaps the very size and heterogeneity of Congress make it a superior deliberator, whereas the executive branch is prone to suffer from various forms of groupthink. But there are clear disadvantages to large numbers, insofar as monitoring executive discretion is at issue. From the standpoint of individual legislators, monitoring is a collective good. If rational and self-interested, each legislator will attempt to free ride on the production of this good, and monitoring will be inefficiently underproduced. More broadly, the institutional prerogatives of Congress are also a collective good. Individual legislators may or may not be interested in protecting the institution of Congress or the separation of legislative from executive power; much depends on legislators’ time horizons or discount rate, the expected longevity of a legislative career, and so forth. But it is clear that protection of legislative prerogatives will be much less emphasized in an institution composed of hundreds of legislators coming and going than if Congress were a single person. “Separation of Parties, not Powers” Congress is, among other things, a partisan institution.19 Political scientists debate whether it is principally a partisan institution, or even exclusively so. But Madison arguably did not envision partisanship in anything like its modern sense. Partisanship undermines the separation of powers during periods of unified government. When the same party controls both the executive branch and Congress, real monitoring of executive discretion rarely occurs, at any rate far less than in an ideal Madisonian system.

### Answers to: Presidential powers bad – National security

#### [ ] Executive authority reduces escalation of international conflict – the capacity of the President to act quickly and decisively without Congressional deliberation is key to secure it.

Royal, 2011

(John-Paul, Institute of World Politics, Class of 2011 Valedictorian, “War Powers and the Age of Terrorism,” <http://www.thepresidency.org/storage/Fellows2011/Royal-_Final_Paper.pdf>)

In the emerging security environment described above, pre-emptive action taken by the executive branch may be needed more often than when nation-states were the principal threat to American national interests. Here again, the 9/11 Commission Report is instructive as it considers the possibility of pre-emptive force utilized over large geographic areas due to the diffuse nature of terrorist networks: In this sense, 9/11 has taught us that terrorism against American interests “over there” should be regarded just as we regard terrorism against America “over here.” In this sense, the American homeland is the planet (National Commission 2004, 362). Furthermore, the report explicitly describes the global nature of the threat and the global mission that must take place to address it. Its first strategic policy recommendation against terrorism states that the: U.S. government must identify and prioritize actual or potential terrorist sanctuaries. For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power (National Commission 2004, 367). Thus, fighting continues against terrorists in Afghanistan, Yemen, Iraq, Pakistan, the Philippines, and beyond, as we approach the tenth anniversary of the September 11, 2001 attacks. Proliferation of weapons of mass destruction (WMD), especially nuclear weapons, into the hands of these terrorists is the most dangerous threat to the United States. We know from the 9/11 Commission Report that Al Qaeda has attempted to make and obtain nuclear weapons for at least the past fifteen years. Al Qaeda considers the acquisition of weapons of mass destruction to be a religious obligation while “more than two dozen other terrorist groups are pursing CBRN [chemical, biological, radiological, and nuclear] materials” (National Commission 2004, 397). Considering these statements, rogue regimes that are openly hostile to the United States and have or seek to develop nuclear weapons capability such as North Korea and Iran, or extremely unstable nuclear countries such as Pakistan, pose a special threat to American national security interests. These nations were not necessarily a direct threat to the United States in the past. Now, however, due to proliferation of nuclear weapons and missile technology, they can inflict damage at considerably higher levels and magnitudes than in the past. In addition, these regimes may pursue proliferation of nuclear weapons and missile technology to other nations and to allied terrorist organizations. The United States must pursue condign punishment and appropriate, rapid action against hostile terrorist organizations, rogue nation states, and nuclear weapons proliferation threats in order to protect American interests both at home and abroad. Combating these threats are the “top national security priority for the United States…with the full support of Congress, both major political parties, the media, and the American people” (National Commission 2004, 361). Operations may take the form of pre-emptive and sustained action against those who have expressed hostility or declared war on the United States. Only the executive branch can effectively execute this mission, authorized by the 2001 AUMF. If the national consensus or the nature of the threat changes, Congress possesses the intrinsic power to rescind and limit these powers.

### Answers to: Presidential Powers bad - Dictatorship

#### [ ] The Executive branch will check itself – it won’t spillover into a dictatorship.

Sales, Professor at George Mason University School of Law, 2012

(7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, “Self-Restraint and National Security”)

Much of the caselaw and scholarship concerning national security rests on the assumption that the executive branch is institutionally prone to overreach - that, left to its own devices, it will inch ever closer to the line that separates illegal from legal, and sometimes enthusiastically leap across it. The obvious conclusion is that external, principally judicial, checks are needed to keep the Executive in line.2 In many cases the Executive does indeed push the envelope. But not always.' The government often has powerful incentives to stay its own hand - to forbear from military and intelligence operations that it believes are perfectly legal. Officials may conclude that a proposed mission - a decapitation strike on al Qaeda's leadership, say, or the use of mildly coercive interrogation techniques on a captured terrorist - is entirely permissible under domestic and international law. Yet they nevertheless might rule it out. In other words, the government sometimes adopts self-restraints that limit its ability to conduct operations it regards as legally justified; it "fight[s] with one hand behind its back," to borrow Aharon Barak's memorable phrase.4 This article tries to explain these restraints by consulting public choice theory - in particular, the notion that government officials are rationally self-interested actors who seek to maximize their respective welfare. Part I develops an analytical framework. Part II identifies four examples of self- restraint. Parts III and IV offer hypotheses for why the government adopts them. One example of self-restraint is Executive Order 13,491, which limits counterterrorism interrogations, including those conducted by the CIA, to the techniques listed in the Army Field Manual. The AFM prohibits or severely restricts a number of fairly mild interrogation methods such as low-grade threats, the "good cop, bad cop" routine, and other staples of garden-variety law enforcement investigations. A second example, sketched above, is the White House's onetime reluctance to use targeted killings against Osama bin Laden, despite its belief that doing so would be consistent with domestic and international laws against assassination. Third, lawyers in the Judge Advocate General corps sometimes reject military strikes that would be permissible under the law of war, but that they regard as problematic for moral, economic, social, or political reasons. A fourth example is the Justice Department's erection of a "wall" that restricted information sharing between intelligence officials and criminal investigators, despite the fact that the applicable statute (the Foreign Intelligence Surveillance Act of 1978) contained no such limits, and despite the fact that the governing DOJ guidelines established mechanisms for swapping such data. The question then becomes why officials adopt these restraints even when they believe them to be legally unnecessary. Public choice theory suggests two possible explanations. First, self-restraint might result from systematic asymmetries in military and intelligence officials’ expected value calculations. The expected costs of a given national security operation often dwarf the expected benefits; officials have more to lose from being aggressive than they have to gain. In particular, operations – even concededly lawful ones – can inspire adversaries to launch demoralizing propaganda campaigns accusing the United States of war crimes, can sap the willingness of allies to assist this country, and can even result in criminal prosecutions or private lawsuits against the responsible officials. In addition, the resulting costs can be internalized onto the responsible officials more easily than the resulting benefits. While all national security players experience a degree of costbenefit asymmetry, some experience more than others. In particular, the senior policymakers who approve operations, and the lawyers who review them, seem even more cautious than the operators who actually carry them out. This may be because policymakers and lawyers discount some of the benefits that operators expect to gain (e.g., certain forms of psychic income), and also account for certain costs that operators overlook (e.g., ramifications for the country’s broader strategic priorities). Policymakers and lawyers therefore will veto proposed missions when they calculate – as they often will – that their costs exceed their benefits. Second, self-restraint might result from bureaucratic “empire building,”5 as lawyers and other officials seek to magnify their clout by rejecting operations planned by their inter- and intra-agency competitors. Military and intelligence figures seek to maximize, among other values, the influence they hold over senior policymakers as well as autonomy to pursue the priorities they deem important. One way for an official to do that is to interfere with a rival’s plans. A bureaucratic player typically gains no power by serving as a competitor’s yes man. Often, it gains by saying no, because its obstruction forces the rival to be responsive to its concerns. Reviewers in the government’s national security apparatus therefore will veto operations planned by other entities when doing so will enhance their welfare.

### Credibility Impact Add-on (1/2)

#### Executive weakness destroys credibility—that emboldens adversaries and undercuts our ability to respond to international crises.

Howell, 2007

(William, professor of political science at U-Chicago, and Jon C. Pevehouse, professor of Political Science UW-Madison, “While Dangers Gather : Congressional Checks on Presidential War Powers,” 2007 ed.)

To the extent that congressional discontent signals domestic irresolution to other nations, the job of resolving a foreign crisis is made all the more difficult. As Kenneth Schultz shows, an ''opposition party can undermine the credibility of some challenges by publicly opposing them. Since this strategy threatens to increase the probability of resistance from the rival state, it forces the government to be more selective about making threats "—and, concomitantly, more cautious about actually using military force.'4 When members of Congress openly object to a planned military operation, would-be adversaries of the United States may feel emboldened, believing that the president lacks the domestic support required to see a military venture through. Such nations, it stands to reason, will be more willing to enter conflict, and if convinced that the United States will back down once the costs of conflict are revealed, they may fight longer and make fewer concessions. Domestic political strife, as it were, weakens the ability of presidents to bargain effectively with foreign states, while increasing the chances that military entanglements abroad will become protracted and unwieldy. A large body of work within the field of international relations supports the contention that a nation's ability to achieve strategic military objectives in short order depends, in part, on the head of state's credibility in conveying political resolve**.** Indeed, a substantial game theoretic literature underscores the importance of domestic political institutions and public opinion as state leaders attempt to credibly commit to war,75 Confronting widespread and vocal domestic opposition, the president may have a difficult time signaling his willingness to see a military campaign to its end, While congressional opposition may embolden foreign enemies, the perception on the part of allies that the president lacks support may make them wary of committing any troops at all.

### Credibility Impact Add-on (2/2)

#### That risks war and nuclear weapon use – our credibility holds the world together.

**Coes, 2011**

(Ben, Visiting Fellow at Harvard University’s John F. Kennedy School of Government, degree from Columbia University, received the prestigious Bennett Cerf Memorial Prize, “The disease of a weak president”, The Daily Caller, 9-30-11, <http://dailycaller.com/2011/09/30/the-disease-of-a-weak-president/>)

The disease of a weak president usually begins with the Achilles’ heel all politicians are born with — the desire to be popular. It leads to pandering to different audiences, people and countries and creates a sloppy, incoherent set of policies. Ironically, it ultimately results in that very politician losing the trust and respect of friends and foes alike. In the case of Israel, those of us who are strong supporters can at least take comfort in the knowledge that Tel Aviv will do whatever is necessary to protect itself from potential threats from its unfriendly neighbors. While it would be preferable for the Israelis to be able to count on the United States, in both word and deed, the fact is right now they stand alone. Obama and his foreign policy team have undercut the Israelis in a multitude of ways. Despite this, I wouldn’t bet against the soldiers of Shin Bet, Shayetet 13 and the Israeli Defense Forces. But Obama’s weakness could — in other places — have implications far, far worse than anything that might ultimately occur in Israel. The triangular plot of land that connects Pakistan, India and China is held together with much more fragility and is built upon a truly foreboding foundation of religious hatreds, radicalism, resource envy and nuclear weapons. If you can only worry about preventing one foreign policy disaster, worry about this one. Here are a few unsettling facts to think about: First, Pakistan and India have fought three wars since the British de-colonized and left the region in 1947. All three wars occurred before the two countries had nuclear weapons. Both countries now possess hundreds of nuclear weapons, enough to wipe each other off the map many times over. Second, Pakistan is 97% Muslim. It is a question of when — not if — Pakistan elects a radical Islamist in the mold of Ayatollah Khomeini as its president. Make no mistake, it will happen, and when it does the world will have a far greater concern than Ali Khamenei or Mahmoud Ahmadinejad and a single nuclear device. Third, China sits at the northern border of both India and Pakistan. China is strategically aligned with Pakistan. Most concerning, China covets India’s natural resources. Over the years, it has slowly inched its way into the northern tier of India-controlled Kashmir Territory, appropriating land and resources and drawing little notice from the outside world. In my book, Coup D’Etat, I consider this tinderbox of colliding forces in Pakistan, India and China as a thriller writer. But thriller writers have the luxury of solving problems by imagining solutions on the page. In my book, when Pakistan elects a radical Islamist who then starts a war with India and introduces nuclear weapons to the theater, America steps in and removes the Pakistani leader through a coup d’état. I wish it was that simple. The more complicated and difficult truth is that we, as Americans, must take sides. We must be willing to be unpopular in certain places. Most important, we must be ready and willing to threaten our military might on behalf of our allies. And our allies are Israel and India. There are many threats out there — Islamic radicalism, Chinese technology espionage, global debt and half a dozen other things that smarter people than me are no doubt worrying about. But the single greatest threat to America is none of these. The single greatest threat facing America and our allies is a weak U.S. president. It doesn’t have to be this way. President Obama could — if he chose — develop a backbone and lead. Alternatively, America could elect a new president. It has to be one or the other. The status quo is simply not an option.

### Executive Order Counterplan 1NC

#### The President of the United States, through executive order, should prohibit the use of drones for domestic surveillance without a warrant.

#### The counterplan solves the affirmative while preserving executive flexibility.

Metzger, Professor of Law, Columbia Law School, 2015

(Gillian, April 2015, “ARTICLE: The Constitutional Duty To Supervise”, Yale Law Review, LexisNexis, 124 Yale L.J. 1836)

Supervision and oversight are similarly pivotal when it comes to legal accountability. While courts play a central role in enforcing legal constraints on government, a variety of factors can limit the effectiveness and availability of such judicial review. 252 Internal supervision is free of many of these obstacles, and thus plays a critical role in guaranteeing administrative adherence to governing legal requirements.253 Reliance on internal supervision and oversight to achieve legal accountability, instead of just on courts, also minimizes the risk that enforcing legal constraints will undermine managerial control and accountability. 254 Despite its resistance to according supervision much constitutional significance, the Court has noted the role bureaucratic supervision plays in ensuring legal adherence. Thus, for example, it has emphasized the availability of internal administrative complaint mechanisms that could uncover and address constitutional violations in refusing to imply a Bivens right to challenge such violations in court.255 A number of scholars have gone further, underscoring the importance of internal administrative constraints in ensuring that delegated power is not wielded in an arbitrary fashion.256 And while the scope of delegated federal power is much vaster today, similar concerns with ensuring that government officials adhere to governing legal requirements have fueled bureaucratic supervision since the birth of the nation.257 Indeed, the Take Care Clause formally links supervision and legal accountability by tying supervision to faithful execution of the laws.258¶ Put starkly, bureaucratic and managerial accountability in the form of internal executive branch supervision is an essential precondition for political and legal accountability, given the phenomenon of delegation. Scholars debate whether the broad delegations that characterize modern administrative government can ever accord with the Constitution’s grant of legislative power to Congress and separation of power principles. That debate will no doubt continue, but has been eclipsed by reality; modern delegation is here to stay.259 The more pressing question today is how best to integrate the inevitable phenomenon of delegation into the Constitution’s structure. The answer, to my mind, is recognizing that delegation creates a constitutional imperative to ensure that the powers transferred are used in accordance with constitutional accountability principles. In short, delegation creates a duty to supervise delegated power.

### Answers to: Perm (Congress and Executive should act together)

#### [ ] Presidential power is zero-sum – congressional action will gut flexibility.

Barilleaux and Kelley, 2010

(Ryan J. , Professor of Political Science at Miami, OH; and Christopher S. , Lecturer (Political Science) at Miami, OH, The Unitary Executive and the Modern Presidency, Texas A&M Press, p. P 196-197)

In their book *The Broken Branch,* Mann and Ornstein paint a different view. They discuss a wider range of public policy areas than just uses of force. Their argument is that although party is important as a conditioning factor for times when Congress might try to restrain an aggressive or noncompliant executive, there has also been a broader degrading of institutional power that has allowed, in a zero-sum context, the president to expand executive power at the expense of Congress. Mann and Ornstein thus posit that congressional willingness to subordinate its collective power to that of the president has occurred across domestic politics and foreign affairs. They argue that a variety of factors are at fault for this trend, including the loss of institutional identity, the willingness to abdicate responsibility to the president, the demise of "regular order," and most importantly that Congress has lost its one key advantage as a legislative body—the decay of the deliberative process. Thus, they do recognize that party politics has played an important role in the degrading of congressional power, but they see a larger dynamic at work, one that reaches beyond partisanship. While we agree with Howell and Pevehouse that Congress retains important mechanisms for constraining the president, we tend to agree with the Mann and Ornstein view that there has been a significant and sustained decline in Congress's willingness to use these mechanisms to challenge presidential power. This tendency has been more prevalent in foreign affairs but has occurred noticeably across the spectrum of public policy issues. Building from both of those perspectives, and others, we argue that it is helpful to understand the pattern of congressional complicity in the rise of presidential power by viewing Congress's aiding and abetting as the logical outcomes of a collective action problem.31 By constitutional design, the legislative branch is in competition with the president for institutional power, yet Congress is less than ideally suited for such a political conflict. Congress's comparative disadvantage begins with its 535 "interests" that are very rarely aligned, and if so, only momentarily. Because individual reelection overshadows all other goals, members of Congress naturally seek to take as much credit and avoid as much blame from their constituencies as possible.32 The dilemma this creates for members is how to use or delegate its collective powers in order to maximize credit and minimize blame in the making of public policy. Congress can choose to delegate power internally to committees and party leaders or externally to the executive branch. One can conceptualize the strategic situation of members of Congress in terms of a prisoner's dilemma.33 If members cooperate (that is, in Mann and Ornstein's parlance, if members identify with the institution), they could maintain and advance Congress's institutional power. But they would have to bypass some potential individual payoffs that could come from defection, such as "running against Congress" as an electoral strategy. A stronger institution should make all members of Congress better off, but it also makes them responsible for policymaking. If members defect from the institution, they thus seek to maximize constituency interests either by simply allowing power to fall by the wayside or by simply delegating it to the president. As more and more members choose to defect over time, the "public good" of a strong Congress is not provided for or maintained—and Congress's institutional authority erodes and presidential power fills in the gap.

### Answers to: Perm (Congress and Executive should act together)

#### [ ] Only the counterplan alone solves the net benefit – congressional deference is key.

Bellia, Professor of Law @ Notre Dame, 2002

(Patricia, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis)

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. **The combination of** congressional silence **and judicial inaction** has the **practical** effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, **the implied** presidential power given **effect** by virtue ofcongressional silence **and judicial inaction** can solidify into a broader claim**. When the Executive exercises an "initiating"** or "concurrent" **power, it will tie that power to a textual provision or to a claim about the structure of the Constitution.** Congress's silence **as a practical matter** tends to validate theexecutive rationale, and the Executive **Branch** maythen claim a power not only to exercise the **disputed** authority in the face of congressional silence, but also **to exercise the disputed authority** inthe face of congressional opposition. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a  [\*151]  ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

### Answers to: Congressional action key to solve

#### [ ] Congress can’t check the executive – inconsistent policies and partisan bickering make it an ineffective tool for limiting surveillance.

Bendix and Quirk 15

(William Bendix and Paul J. Quirk , assistant professor of political science at Keene State College; Phil Lind Chair in U.S. Politics and Representation at the University of British Columbia, “Secrecy and negligence: How Congress lost control of domestic surveillance”, Issues in Governance Studies, March 2015, <http://www.brookings.edu/~/media/research/files/papers/2015/03/02-secrecy-negligence-congres-surveillance-bendix-quirk/ctibendixquirksecrecyv3.pdf>)

We argue that Congress as an institution has great difficulty acting in any consistent, balanced way to protect privacy interests on surveillance issues. On one hand, when setting broad priorities in general terms, it attaches considerable weight to privacy interests. On the other hand, when faced with specific issues of investigatory authority, it readily makes sweeping, indiscriminate sacrifices of those same interests—even without distinct evidence of serious threat.¶ The lack of consistency in defending privacy interests has several sources. Most fundamental, legislators reflect the attitudes and demands of their constituencies. The American public has generally been quite willing to surrender privacy rights for the sake of enhanced security, against even unspecified, highly indefinite terrorist threats.1 In addition, there are generally no well-organized, powerful constituencies for privacy interests.2¶ But several factors exaggerate the effect. First, decisions on surveillance are largely about risk (for example, the probability of an abusive “fishing expedition” versus that of a major terrorist attack). Congress members have strong temptations to defer to the executive branch on decisions that could, therefore, turn out badly. Second, the president’s party is more interested in defending the executive than in checking its decisions.3 Third, surveillance politics is complicated by long-term partisan and ideological divisions that were shaped by the particular conflicts of the Cold War era. For generations, the main targets of intelligence-agency surveillance have been mostly on the political left. This history may inhibit the response of many Republicans to the threat of intrusive government, even though the main targets and likely victims of intrusive surveillance are no longer a well-defined ideological category. Fourth, the committee system has been another impediment: overlapping jurisdictions among the Homeland Security, Intelligence, and Judiciary panels prevent any one of them from being held accountable for stalled policy or lapses in oversight.4¶ Finally, and very important, Congress has particular difficulties with policies that must be decided in secret—such as those for controlling technologically advanced surveillance methods. To prevent profuse leaks, Congress and the executive have imposed severe restrictions on members’ access to information. When the full House or Senate decides policy, however, the restricted information encourages some members to opt out of serious participation, degrading the intelligence of deliberation and promoting deference to the executive.¶ Lacking any settled disposition on surveillance issues, Congress will respond to the leadership, and sometimes merely the political cover, provided by other institutions—especially the president, the intelligence agencies, and the FISA Court. It may take cues from the Justice Department or other executive agencies, and it will defer to rulings by the regular federal courts. In the end, Congress’s performance in protecting privacy may depend on the design of the legislative arrangements for dealing with secret programs and on the structures and missions of relevant administrative and judicial institutions.

### Answers to: Accountability

#### [ ] Congressional action can’t enforce accountability on the executive branch.

Setty Professor at Western New England University School of Law, 2015

(Sudha, “Surveillance, Secrecy, and the Search for Meaningful Accountability”, 51 STAN. J. INT'L L 16, <http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1305&context=facschol>)

One of the most intractable problems in the debate around maintaining¶ the rule of law while combating the threat of terrorism is the question of¶ secrecy and transparency. In peacetime, important tenets to the rule of law¶ include transparency of the law, limits on government power, and consistency¶ of the law as applied to individuals in the polity. Yet the post-9/11 decision making¶ by the Bush and Obama administrations has been characterized by¶ excessive secrecy that stymies most efforts to hold the government¶ accountable for its abuses. Executive branch policy with regard to detention,¶ interrogation, targeted killing, and surveillance are kept secret, and that¶ secrecy has been largely validated by a compliant judicial that has¶ dismissed almost all suits challenging human and civil rights abuses resulting¶ from counterterrorism programs. Efforts by Congress to engage in¶ meaningful oversight have met with mixed results; in the area of government**¶** surveillance, such efforts have been fruitless without the benefit of leaked¶ information on warrantless surveillance by government insiders. The¶ executive branch has generally refused to make public vital aspects of its¶ surveillance programs in ways that could give oversight efforts more muscle.¶ At the same time, the executive branch has consistently defended the legality¶ and efficacy of these surveillance programs.¶ This paper considers the nature and effect of the warrantless surveillance¶ infrastructure constructed in the United States since the terrorist attacks of¶ September 11, 2001, and discusses surveillance-related powers and¶ accountability measures in the United Kingdom and India as comparative¶ examples.

### Answers to: Accountability

#### [ ] Congressional checks on the executive fail – they lack the jurisdiction.

Marshall, legal counsel for President Clinton, 2008

(William, “Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters,” Boston University Law Review, <https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>)

The expansion of presidential power is only part of the story. Because the constitutional commitment to separation of powers depends on a balance between the executive and legislative branches,86 the related question that must be addressed is how the expansion of presidential power relates to the powers of the Congress. In this respect, it does not appear that any expansion in the powers of Congress have kept pace with the increasing power of the President.87 At least two significant changes since the Founding have worked to Congress’s advantage in its battles with the Presidency. First, the Supreme Court has recognized Congress’s non-textual power to investigate and oversee the executive branch.88 This power is significant and, indeed, has at times been enormously effective in uncovering executive branch malfeasance.89 But the power to investigate has not, and likely cannot, fully compensate for the power the Presidency enjoys in controlling information. After all, Congress’s oversight authority is not self-executing, and, as the experience of both the Clinton and Bush II presidencies have shown, frequently can be frustrated by a combative President. Moreover, even if Congress has the political will to force a recalcitrant administration to turn over information, the President’s control over information may be so absolute that Congress does not even know what to ask for.90 How can Congress, for example, request materials relating to a domestic surveillance program if it does not know that such a program exists?

### Answers to: Circumvention

#### [ ] Executive orders are binding - internal checks ensure a culture of compliance in executive agencies.

Katyal, Professor of National Security Law @ Georgetown, 2006

(Neal, “Toward Internal Separation of Powers” *Yale Law Journal*, LexisNexis)

The downside of incorporating a presidential-overrule mechanism is that it may politicize the Director. The Director might fear being overruled and tailor opinions accordingly. But that dark scenario is unlikely to unfold—a rational Director would appreciate the myriad reasons why a President’s formal power would not be exercised, such as fear of publicity and lack of expertise.89 Yet the formality trap looms far larger in executive power debates than it should. We do not clamor for legislation to restrict federal courts from issuing advisory opinions simply because they are the only ones to have announced this restriction on their jurisdiction. So too we do not clamor for legislation to prevent Congress from easily declaring war simply because it could. Instead, in both cases we rely on obvious internal checks. Here, too, publicity, expertise, and good judgment will make it structurally difficult for the President to overrule the Director in many instances. ¶ Government has confronted a similar problem before. The Ethics in Government Act of 1978 created something akin to a Director of Adjudication, albeit in the form of a prosecutor instead of a judge.90 The Independent Counsel lacked accountability and was often insensitive to a decision’s longterm cost.91 Congress eventually let these powers return to the Justice Department. But the Department then issued regulations creating Special Prosecutors removed from the day-to-day control and influence of political actors.92 Special Prosecutors are free to conduct their investigations and, after deciding on particular courses of action, must present their proposals to the Attorney General, who retains a veto power. ¶ Critics relied on the formality trap, arguing that internal regulations would falter under the Attorney General’s veto power. In response, the regulations required the Attorney General to notify Congress if he interfered with a Special Prosecutor. As a result, lines of accountability were preserved, so much that the Attorney General could be held responsible for trying to bury an investigation. Thus, the matter would receive political, though perhaps not public, oversight. Similarly, a presidential overruling of the Director of Adjudication could trigger reporting to Congress. Congress, though unlikely to begin legislating after a single override (for reasons offered in Part I), could use formal pressures of oversight hearings and informal pressures through the media to demand some accountability. While the executive would therefore be accountable to the other branches, instead of directly to the public, these mechanisms would nevertheless function as a valuable constraint. Over time, a culture of compliance might emerge, in which Presidents would not second-guess the opinions of the Director except in extreme instances.

### Answers to: Rollback

#### [ ] Executive orders are almost never rolled back – it sets a terrible precedent.

Branum, 2002

(Tara, Associate, Fulbright & Jaworski L.L.P., Houston, Texas. J.D. University of Texas; Austin, Texas (2001); B.A. Rice University; Houston, Texas (1994). Texas Review of Law & Politics; Editor-in-Chief (Spring 2000-Spring 2001), Managing Editor, PRESIDENT OR KING? THE USE AND ABUSE OF EXECUTIVE ORDERS IN MODERN-DAY AMERICA, <http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1163&context=jleg>)

The public perception problem is not limited to promises by political candidates. Congressmen and private citizens besiege the President with demands that action be taken on various issues.273 To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office.274 Many were controversial and the need for the policies he instituted was debatable.7 5 Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. 276 A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

### Answers to: Transparency

#### [ ] An executive order can limit drone use and create transparency – only the president has the authority to share classified information.

Whitlock, reporter for the Washington Post, 2014

(Craig, “White House plans to require federal agencies to provide details about drones,” *Washington Post*, September 26, Online: https://www.washingtonpost.com/world/national-security/white-house-plans-to-require-federal-agencies-to-provide-details-about-drones/2014/09/26/5f55ac24-4581-11e4-b47c-f5889e061e5f\_story.html)

The White House is preparing a directive that would require federal agencies to publicly disclose for the first time where they fly drones in the United States and what they do with the torrents of data collected from aerial surveillance. The presidential executive order would force the Pentagon, the Justice Department, the Department of Homeland Security and other agencies to reveal more details about the size and surveillance capabilities of their growing drone fleets — information that until now has been largely kept under wraps. The mandate would apply only to federal drone flights in U.S. airspace. Overseas military and intelligence operations would not be covered. President Obama has yet to sign the executive order, but officials said that drafts have been distributed to federal agencies and that the process is in its final stages. “An interagency review of the issue is underway,” said Ned Price, a White House spokesman. He declined to comment further. Privacy advocates said the measure was long overdue. Little is known about the scope of the federal government’s domestic drone operations and surveillance policies. Much of what has emerged was obtained under court order as a result of public-records lawsuits. “We’re undergoing a quiet revolution in aerial surveillance,” said Chris Calabrese, legislative counsel for the American Civil Liberties Union. “But we haven’t had all in one place a clear picture of how this technology is being used. Nor is it clear that the agencies themselves know how it is being used.” Most affected by the executive order would be the Pentagon, which conducts drone training missions in most states, and Homeland Security, which flies surveillance drones along the nation’s borders round-the-clock. It would also cover other agencies with little-known drone programs, including NASA, the Interior Department and the Commerce Department. Military and law enforcement agencies would not have to reveal sensitive operations. But they would have to post basic information about their privacy safeguards for the vast amount of full-motion video and other imagery collected by drones. Until now, the armed forces and federal law enforcement agencies have been reflexively secretive about drone flights and even less forthcoming about how often they use the aircraft to conduct domestic surveillance. Security officials are generally reluctant to disclose operational methods and techniques. But drones are in a special category of sensitivity, given the top-secret role they’ve long played in CIA and military counterterrorism missions. There’s also evidence that federal agencies simply have been unable to develop internal guidelines and policies quickly enough to keep up with rapid advances in drone technology. “Federal use of drones has gone way up, but it’s hard to document how much,” said Jennifer Lynch, a lawyer with the Electronic Frontier Foundation, a San Francisco-based group that has sued the Federal Aviation Administration for records on government drone operations. “It’s been in­cred­ibly difficult.” Even Congress has struggled to uncover the extent to which the federal government uses drones as a surveillance tool in U.S. airspace.